(1)

FILED
AUG 24 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 97-7597

In The

Supreme Court of the United States

October Term, 1997

PATRICK KNOWLES,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

On Writ Of Certiorari To The
Supreme Court Of Iowa

BRIEF FOR RESPONDENT

THOMAS J. MILLER
Attorney General of Iowa
ELIZABETH M. OSENBAUGH
Solicitor General
*BRIDGET A. CHAMBERS
Assistant Attorney General
Hoover Bldg., 2nd Floor
Des Moines, Iowa 50319
515/281-5164

Attorneys for Respondent

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

62 pp

BEST AVAILABLE COPY

COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Iowa statutes authorize peace officers either to make a custodial arrest or to issue a citation in lieu of arrest for nearly any offense. Iowa Code section 805.1(4) provides that "the issuance of a citation . . . does not affect the officer's authority to conduct an otherwise lawful search." The Iowa Supreme Court has interpreted that provision to authorize a full search incident to arrest where officers have probable cause to make a custodial arrest but forego a highly intrusive custodial arrest and, instead, elect to issue a citation.

The questions presented are:

1. Does Iowa Code section 805.1(4) violate the Fourth Amendment by authorizing search incident to issuance of a citation where the statute conditions search upon the existence of probable cause to arrest and statutory authority to make a custodial arrest?

2. Does the exclusionary rule apply to the fruits of a search conducted incident to issuance of a citation where the officer relied on a state statute which authorizes such search?

3. Is Knowles precluded from challenging the search in this case due to his failure to seek review of the final judgment in a companion case which involved an identical challenge to the same search which is being challenged in this proceeding?

TABLE OF CONTENTS

Page

Counterstatement of Questions Presented for Review i

Opinions Below 1

Jurisdiction 1

Constitutional Provisions and Statutes Involved 1

Statement of the Case 4

Summary of Argument 7

Argument 11

I. KNOWLES' FACIAL CHALLENGE TO IOWA CODE SECTION 805.1(4) SHOULD NOT BE PERMITTED BUT, IF THE COURT REACHES THE MERITS OF THAT CLAIM, KNOWLES CANNOT MEET HIS BURDEN TO SHOW THAT THE STATUTE COULD NEVER BE CONSTITUTIONALLY APPLIED 11

II. IOWA CODE SECTION 805.1(4) COMPLIES WITH THE FOURTH AMENDMENT AS IT AUTHORIZES SEARCHES INCIDENT TO CITATION ONLY WHERE THERE IS PROBABLE CAUSE TO ARREST AND CONSTITUTES A LESSER INTRUSION ON FOURTH AMENDMENT INTERESTS THAN CUSTODIAL ARREST AND INCIDENT SEARCH 14

A. SEARCHES INCIDENT TO ARREST ARE *PER SE* REASONABLE UNDER THE FOURTH AMENDMENT 18

TABLE OF CONTENTS – Continued

Page

B. SEARCHES INCIDENT TO CITATION COMPLY WITH THE FOURTH AMENDMENT: THEY ARE *PER SE* REASONABLE; FURTHER, UNDER A BALANCING TEST, THE STATE'S INTERESTS IN PROTECTING OFFICERS AND PRESERVING EVIDENCE OUTWEIGH THE AFFECTED PRIVACY INTERESTS 21

III. TO THE EXTENT THAT PETITIONER CHALLENGES IOWA CODE SECTION 805.1(4) AS IT APPLIES IN HIS CASE, THE SEARCH COMPLIED WITH THE FOURTH AMENDMENT AND, EVEN IF IT DID NOT, THE EXCLUSIONARY RULE DOES NOT APPLY TO THE FRUITS OF THE SEARCH AS THE OFFICER RELIED IN GOOD FAITH ON THE VALIDITY OF THE STATUTE 45

A. THE SEARCH OF KNOWLES' CAR WAS A PROPER SEARCH INCIDENT TO ARREST AS IT WAS BASED UPON PROBABLE CAUSE TO ARREST 46

B. EVEN IF THE SEARCH OF KNOWLES' CAR VIOLATED THE FOURTH AMENDMENT, THE EXCLUSIONARY RULE DOES NOT APPLY AS THE OFFICER SEARCHED IN GOOD FAITH RELIANCE ON IOWA CODE SECTION 805.1(4) WHICH AUTHORIZED THE SEARCH 46

CONCLUSION 50

TABLE OF AUTHORITIES

Page

CASES

Adams v. Williams, 407 U.S. 143 (1972) 24, 28

Agnello v. United States, 269 U.S. 20 (1925) 18

Arizona v. Evans, 514 U.S. 1 (1995) 47, 49

Bell v. Wolfish, 441 U.S. 520 (1979)..... 12

Bundy v. State, 455 So.2d 330 (Fla. 1984)..... 26

California v. Acevedo, 500 U.S. 565 (1991)..... 42

Camara v. Municipal Court, 387 U.S. 523 (1967)..... 17

Carroll v. United States, 267 U.S. 132 (1925)..... 19

Chimel v. California, 395 U.S. 752 (1969) 19, 24

Delaware v. Prouse, 440 U.S. 648 (1979)..... 17, 23, 42

Federated Department Stores, Inc. v. Moitie, 452 U.S. 394 (1981) 12

Gerstein v. Pugh, 420 U.S. 103 (1975) 16

Go-Bart v. United States, 282 U.S. 344 (1931)..... 19

Gustafson v. Florida, 414 U.S. 260 (1973) 19, 33, 36, 37, 44

Harris v. United States, 331 U.S. 145 (1947), *overruled in part by* Chimel v. California, 395 U.S. 752 (1969)..... 19

Illinois v. Krull, 480 U.S. 340 (1987)..... 24, 47, 48, 49

Marron v. United States, 275 U.S. 192 (1927) 19

Maryland v. Wilson, 519 U.S. 408, 117 S.Ct. 882 (1997) 24, 25, 27, 36, 37

Michigan v. De Fillippo, 443 U.S. 31 (1979).....47, 48

TABLE OF AUTHORITIES – Continued

Page

Michigan v. Long, 463 U.S. 1032 (1983)..... 32, 33, 37

Michigan v. Summers, 452 U.S. 692 (1981)..... 28

New York v. Belton, 453 U.S. 454 (1981).....20, 37

New York v. Class, 475 U.S. 106 (1986)..... 23, 29, 32

Ohio v. Robinette, 519 U.S. 33, 117 S.Ct. 417 (1996) 36

Pennsylvania v. Mimms, 434 U.S. 106 (1977) 24, 27, 32, 37

Pennsylvania Board of Probation and Parole v. Scott, ___ U.S. ___, 118 S. Ct. 2014 (1998) 49

People v. Bland, 884 P.2d 312 (Colo. 1994)..... 35

Peters v. New York, 392 U.S. 40 (1968)..... 21

Preston v. United States, 376 U.S. 364 (1964) 19

Rawlings v. Kentucky, 448 U.S. 98 (1980)..... 22

Sibron v. New York, 392 U.S. 40 (1968) ... 7, 12, 13, 22

Skinner v. Railway Labor Exec. Ass'n, 489 U.S. 602 (1989) 12

State v. Becker, 458 N.W.2d 604 (Iowa 1990).....16, 40

State v. Cook, 530 N.W.2d 728 (Iowa 1995).....15, 47

State v. Doran, 563 N.W.2d 620 (Iowa 1997)..14, 15, 16

State v. Greenslit, 151 Vt. 225, 559 A.2d 672 (1989) 35

State v. Knowles, 569 N.W.2d 601 (Iowa 1997)... 1, 15, 16

State v. Meyer, 543 N.W.2d 876 (Iowa 1996)..15, 40, 47

State v. Sheridan, 96 N.W. 730 (1903) 47

Steagald v. United States, 451 U.S. 204 (1981) 16

TABLE OF AUTHORITIES – Continued

Page

Terry v. Ohio, 392 U.S. 1 (1968) ..... *passim*

Trupiano v. United States, 334 U.S. 699 (1948), *overruled in part by* United States v. Rabinowitz, 339 U.S. 56 (1950) 19

United States v. Brignoni-Ponce, 422 U.S. 873 (1975) 29

United States v. DiRe, 332 U.S. 581 (1948) 25

United States v. Lefkowitz, 285 U.S. 452 (1932) 19

United States v. Leon, 468 U.S. 897 (1984) 47

United States v. Martinez-Fuerte, 428 U.S. 543 (1976) 42

United States v. Rabinowitz, 339 U.S. 56 (1950), *overruled in part by* Chimel v. California, 395 U.S. 752 (1969) 19

United States v. Robinson, 414 U.S. 218 (1973) ... *passim*

United States v. Watson, 423 U.S. 411 (1976) 24

Weeks v. United States, 232 U.S. 383 (1914) .. 16, 18, 47

Whren v. United States, 517 U.S. 806 (1996) ..... *passim*

CONSTITUTIONAL PROVISION

United States Constitution, Amendment Four .... *passim*

STATUTES

Iowa Code § 124.401(1)(a) (1995) 15

Iowa Code § 124.401(3) (1995) 5

Iowa Code § 124.402(1)(e) (1995) 5

TABLE OF AUTHORITIES – Continued

Page

Iowa Code §§ 321.561, 321.555, 903.1(2), 321.555 (1997) 26

Iowa Code § 708.11 (1995) 15

Iowa Code §§ 713.4, 714.2(1), 902.9(3) (1997) 26

Iowa Code §§ 714.1(2), 902.9(4) (1995) 26

Iowa Code § 804.1(5) (1995) 12

Iowa Code § 804.1(6) (1995) 40

Iowa Code § 804.7 (1995) 2, 3, 4, 15, 16, 40

Iowa Code § 805.1 (1995) 3, 4, 15

Iowa Code § 805.1(1) (1995) 15, 43

Iowa Code § 805.1(4) (1995) ..... *passim*

Iowa Code §§ 805.1(6), 804.7 (1995) 4, 15, 19

Iowa Code § 811.1 (1995) 15

OTHER AUTHORITY

ABA Standards for Criminal Justice §§ 10-2.1, 10-2.2, 10-2.3 (2d ed. rev. 1985) 28, 34, 35

ABA Standards for Criminal Justice § 10-2.4 (2d ed. rev. 1985) 34

Amsterdam, Perspectives on the Fourth Amendment, 58 Minn.L.Rev. 349 (1974) 37

Bristow, Police Officer Shootings – A Tactical Evaluation, 54 Crim. L.C. & P.S. 93 (1963) 25

Janet Koven Levit, "Pretextual Traffic Stops: United States v. Whren and the Death of Terry v. Ohio", 28 Loy. U. Chi. L. J. 145 (1996) 41

TABLE OF AUTHORITIES – Continued

Page

LaFave, "Search and Seizure: A Treatise on the Fourth Amendment", 3d ed. §§ 5.2(c), 5.2(h) 28, 34, 35, 37, 38

Model Code of Pre-Arraignment Procedure § 120.2 (1975) 28, 34

Restatement Second of Judgments § 14, comment a; § 27, comment 1 (1981) 12

Stephan Braun, "Trooper's Vigilance Led to Arrest of Blast Suspect," L.A. Times, A-1 (April 22, 1995) 27

Uniform Crime Reports, 1996, United States Department of Justice, Federal Bureau of Investigation, "Law Enforcement Officers Killed and Assaulted," p. 3 25

Unif.R.Crim.P. 211, 10 U.L.A. 14 (1992) 34, 35

Whren v. United States and Pretextual Traffic Stops: The Supreme Court Declines to Plumb Collective Conscience of Police, Christopher R. Dillon, 38 B. C. L. Rev. 737 (1997) 44

18 Wright, Miller & Cooper, Federal Practice and Procedure § 4404 12

OPINIONS BELOW

State v. Knowles, 569 N.W.2d 601 (Iowa 1997) (J.A. 30).

State v. Knowles, 570 N.W.2d 255 (Iowa 1997) (table) (unpublished per curiam) (Addendum 1).

JURISDICTION

Jurisdiction to review the decision of the Iowa Supreme Court is conferred by 28 U.S.C. § 1257(a). The petition for certiorari was filed on January 20, 1998, within ninety days of the October 22, 1997 decision of the Iowa Supreme Court, and is therefore timely under Supreme Court Rule 13.

Knowles, however, did not seek review of a companion decision of the Iowa Supreme Court entered on September 17, 1997, upholding Knowles' conviction for ordinance violations. That unpublished decision rejected the identical challenge to the admission of evidence from the same search. *State v. Knowles*, Addendum 1. On June 29, 1998, Respondent State of Iowa filed a motion to dismiss the writ as improvidently granted based on the preclusive effect of this final judgment. That motion was denied on August 12, 1998.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment Four:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be

violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Iowa statutes:

804.7 Arrests by peace officers.

A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:

1. For a public offense committed or attempted in the peace officer's presence.

2. Where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it.

3. Where the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.

4. Where the peace officer has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official cummunication by bulletin, radio, telegraph, telephone, or otherwise, informing the peace officer that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge.

5. If the peace officer has reasonable grounds for believing that domestic abuse, as defined in section 236.2, has occurred and has

reasonable grounds for believing that the person to be arrested has committed it.

6. As required by section 236.12, subsection 2.

Iowa Code section 804.7 (1995).

805.1. Issuance of citation – release

1. Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11 [the stalking statute], a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest without a warrant or, if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

* * *

4. The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements of R.Cr.P. section 27, subsection 2, paragraph "a", Ia.Ct.Rules, 3rd ed.

* * *

6. When a citation is not issued for an offense for which a citation is authorized, the arrested person may be released pending initial appearance on bail or on other conditions determined by pretrial release guidelines. When an arrested person furnishes bail, the officer then in charge of the place of detention shall secure it in safekeeping and shall see that it is forwarded to

the office of the clerk of court during the clerk's next regular business day.

Iowa Code section 805.1 (1995).

STATEMENT OF THE CASE

A. STATUTORY BACKGROUND:

Iowa law provides officers with the option to make a custodial arrest or to issue a citation for nearly any offense, ranging from very minor traffic offenses to very serious crimes, including most felonies. Iowa Code §§ 804.7, 805.1(1), 805.1(6) (1995). Section 805.1(4) provides that issuance of a citation does not affect the officer's authority to conduct an otherwise lawful search. Iowa Code § 805.1(4) (1995).

B. FACTS:

The facts are not contested. On March 9, 1996, Newton police officer Ronald Cook observed Patrick Knowles speeding 43 miles per hour in a 25 miles per hour zone. J.A. 11-14. Officer Cook stopped Knowles' car and obtained Knowles' driver's license and registration, then returned to his patrol car and requested a computer check on Knowles' license. Officer Cook was informed that Knowles had a valid license and that there was no outstanding warrant for his arrest. Officer Cook, although aware that he had statutory authority to make a custodial arrest, then wrote a speeding citation and awaited the arrival of a backup officer. J.A. 11-17. After the backup officer arrived, Officer Cook returned to Knowles' car and gave Knowles the citation.

Contemporaneously with issuance of the citation, the officer searched Knowles' car. J.A. 15, 17-19. During the search of the car, Officer Cook found two cotton gloves under the driver's seat. Inside one of the gloves were a "pot" pipe and a plastic bag containing a green plant material. J.A. 16. The search of Knowles' car led to the filing of both state and municipal charges.

C. PROCEDURAL HISTORY:

As a result of the search of his car, Knowles was charged with possession of a controlled substance and prohibited acts by a registrant (keeping marijuana in a motor vehicle) in violation of Iowa Code sections 124.401(3) and 124.402(1)(e). J.A. 2-5. He moved to suppress the evidence found in his car on the ground that the statute which authorized the search, Iowa Code section 805.1(4), violated the Fourth Amendment to the United States Constitution. J.A. 6-8. After his motion to suppress was denied, Knowles stipulated to the minutes of testimony and waived his right to a jury trial. J.A. 20-23. He was found guilty of both crimes and sentenced to concurrent ninety-day jail terms. J.A. 26-29. It is these convictions which are at issue in the instant certiorari proceeding.

As a result of the same search, Knowles was separately charged with possession of drug paraphernalia, in violation of a municipal ordinance. Knowles also sought in those proceedings to suppress the evidence obtained during the search of his car. His motion to suppress was denied and he was found guilty. Addendum 1.

Knowles timely appealed his convictions to the Iowa Supreme Court. Knowles moved to consolidate his cases

on appeal. His application to consolidate the appeals stated that "[b]oth appeals involved the exact same facts and issues." Addendum to Motion to Dismiss Writ 1. The State resisted consolidation because there were separate trials below and consolidation "would lead to confusion as to the facts and issues." Addendum to Motion to Dismiss Writ 2-3. The Iowa Supreme Court denied the motion to consolidate. In his separate appeals, Knowles unsuccessfully raised an identical challenge to the March 9 search. Addendum 1; J.A. 30.

In a per curiam opinion issued September 17, 1997, the Iowa Supreme Court affirmed the municipal ordinance conviction and rejected Knowles' constitutional challenge to the search. Addendum 1. Knowles did not seek review by certiorari of that decision.

On October 22, 1997, in an en banc ruling, the Iowa Supreme Court upheld Knowles' convictions for violations of state laws prohibiting possession of marijuana and keeping a controlled substance in an automobile. J.A. 30. The Court held that Iowa Code section 805.1(4) provides authority to search when a violation has occurred that would constitute grounds for arrest. J.A. 32. The Court further held that section 805.1(4) does not offend the Fourth Amendment. J.A. 33.

The Court refused to consider Knowles' argument that the statutory authorization of custodial arrest for speeding violated the Fourth Amendment because Knowles had not raised that argument in his motion to suppress. J.A. 33. Knowles does not raise that claim in this certiorari proceeding. Pet. Br. at 24.

On January 20, 1998, Knowles filed a petition for certiorari from the October 22, 1997 decision. The only

question presented in the petition is a facial challenge to section 805.1(4). The petition for writ of certiorari was granted on March 23, 1998.

On June 29, 1998, the State of Iowa filed a motion to dismiss the writ as improvidently granted because Knowles had not sought review of the companion decision rejecting defendant's identical challenge to the same search as is challenged in this proceeding. This Court denied the motion on August 12, 1998.

SUMMARY OF ARGUMENT

Iowa Code section 805.1(4) (1995) authorizes law enforcement officers to conduct a search contemporaneously with issuance of a citation where the officer has probable cause to arrest but elects to issue a citation and release the suspect. The scope of the search authorized under section 805.1(4) is the same as that constitutionally permitted for searches incident to custodial arrest.

I.

Knowles makes a facial challenge to the statute. Under *Sibron v. New York*, 392 U.S. 40 (1968), Knowles is precluded from making a facial Fourth Amendment challenge to a statute authorizing warrantless searches. Knowles does not raise a challenge to the statute as it applies to him. Consequently, Knowles presents no question for review.

If the Court reaches Knowles' Fourth Amendment challenge to Iowa Code section 805.1(4), Knowles must show that there is no case in which the statute may

constitutionally be applied. Knowles cannot meet that heavy burden. He has impliedly conceded that the statute can be constitutionally applied in some contexts, *i.e.*, where a citation is issued for an offense other than a traffic offense; and where a citation is issued in lieu of continued detention after a custodial arrest has been made. Even if Knowles has not conceded, he cannot show that there is no case in which section 805.1(4) could be constitutionally applied.

II.

A. The Court has long recognized that searches incident to lawful arrest are permissible under the Fourth Amendment. Such searches are *per se* reasonable under the Fourth Amendment as they are based upon probable cause to arrest.

B.1. Search incident to citation is a constitutionally valid subcategory of search incident to arrest. Iowa Code section 805.1(4) complies with the Fourth Amendment as the statute:

> (1) authorizes search incident to citation only where the officer has probable cause to arrest and is statutorily authorized to make a custodial arrest;
>
> (2) furthers the same justifications underlying search incident to custodial arrest, i.e. officer safety and preservation of evidence;
>
> (3) promotes the privacy concerns which underlie the Fourth Amendment as it encourages officers to cite and release suspects rather than effecting much more intrusive custodial arrests; and,

> (4) establishes a bright-line rule which is clear and easily applied by officers in the fluid, often confusing, circumstances surrounding detention of criminal suspects.

Therefore, search incident to citation is *per se* reasonable under the Fourth Amendment where there is probable cause to arrest.

> **B.2.** If section 805.1(4) is not deemed *per se* reasonable, a balancing test applies. The Court balances the State's interest in searching against the intrusion on protected privacy interests. Because the searches authorized by the challenged statute are conditioned upon probable cause, there can be no doubt that the statute complies with the Fourth Amendment.

The validity of that conclusion is reinforced by an examination of the particular interests at stake. The intrusion on suspects' privacy interests is limited. That is because Iowa law enforcement officers have authority to make a custodial arrest, and to search incident to that arrest, in any case where a citation might be issued. On the other hand, the State has a weighty interest in searching in order to protect officer safety and preserve evidence. That interest clearly outweighs any intrusion on the privacy of suspects.

B.3. The permissible scope of a search incident to citation is the same as for a search incident to custodial arrest. The scope of the search must be limited to the rationales which underlie the search. Search incident to citation, like search incident to custodial arrest, is justified by the need to protect officer safety and to prevent destruction of evidence. Those objectives can only be met through a full search; a *Terry*-type

search would not be sufficient to protect officers or prevent the destruction of evidence.

B.4. The Court should issue a bright-line rule authorizing a search whenever a citation is issued and there is probable cause to arrest. Determining whether it is reasonable to believe that a particular suspect is likely to use a weapon or destroy evidence is a difficult question of law and fact. That determination must be made frequently, quickly and in a wide variety of factual circumstances. Under those circumstances, the protections of the Fourth Amendment can be realized only if police act under a clear rule which permits officers to accurately predetermine whether a search is permitted.

B.5. Iowa Code section 805.1(4) permits searches only where there is probable cause to arrest. The requirement of probable cause is sufficient to prevent random, suspicionless searches, prevent expansion of officers' authority to search and curb potential abuses of police power.

III.

A. To the extent that Knowles may be raising a challenge to Iowa Code section 805.1(4) as it applies to him, the search of Knowles' car was lawful as it was based upon probable cause to arrest Knowles.

B. Further, even if the search was unlawful, the exclusionary rule does not apply as the search was conducted in good faith reliance on the validity of section 805.1(4).

Knowles has failed to carry his burden to establish that Iowa Code section 805.1(4) violates the Fourth Amendment. That section is constitutionally reasonable as it is based upon probable cause and because the State's interest in searching outweighs any impact on suspects' privacy interests. Consequently, Knowles' convictions should be affirmed.

ARGUMENT

Knowles makes a facial challenge to the validity of Iowa Code section 805.1(4) (1995). He contends that a statutory grant of authority to search based upon the issuance of a citation violates the Fourth Amendment to the United States Constitution. The Iowa Supreme Court properly rejected that claim, holding that a search incident to citation is a lawful search incident to arrest and does not offend the Fourth Amendment where the officer has probable cause and statutory authorization to make a custodial arrest. The decision of the Iowa Court should be affirmed.

I. KNOWLES' FACIAL CHALLENGE TO IOWA CODE SECTION 805.1(4) SHOULD NOT BE PERMITTED BUT, IF THE COURT REACHES THE MERITS OF THAT CLAIM, KNOWLES CANNOT MEET HIS BURDEN TO SHOW THAT THE STATUTE COULD NEVER BE CONSTITUTIONALLY APPLIED.

Knowles challenges Iowa Code section 805.1(4) on its face; his facial challenge should not be permitted. This Court refused to review a "stop-and-frisk" law on its face

in *Sibron v. New York*, 392 U.S. 40, 59 (1968), finding facial review under the Fourth Amendment to be an "abstract and unproductive exercise."

> The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case.

Id. Thus, Knowles cannot challenge the validity of section 805.1(4) on its face. Instead, he is limited to challenging the statute as it applies to him. Because Knowles has not made an "as applied" challenge to the statute, he presents no issue for review, and therefore his convictions should be affirmed.

Knowles' challenge is precluded for a second reason. Prior to the decision in this case, the Iowa Supreme Court rejected an identical challenge by Knowles to section 804.1(5); that case arose out of the same search at issue here. Addendum 1. Knowles did not seek review of that decision. That earlier, final decision on the same issue is conclusive in this proceeding. *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 401 (1981); Restatement Second of Judgments § 14, comment a; § 27, comment 1 (1981); 18 Wright, Miller & Cooper, *Federal Practice and Procedure* § 4404.

If the Court chooses to reach Knowles' facial challenge, Knowles still must carry a heavy burden. He must show that the statute could *never* be lawfully applied. *Skinner v. Railway Labor Exec. Ass'n*, 489 U.S. 602, 632 n.10 (1989) (involving a facial challenge to a federal regulation authorizing drug and alcohol testing of railway employees), citing *Bell v. Wolfish*, 441 U.S. 520, 560 (1979).

Any overbreadth of the statute is not ground for reversing the judgment below. *Sibron*, 392 U.S. at 59, n.20. Knowles cannot meet his burden to show that section 805.1(4) could not be constitutionally applied. In fact, Knowles has impliedly conceded that the statute can be constitutionally applied in some situations.

First, Knowles' statement of the question presented and his brief on the merits challenge section 805.1(4) only as it applies to issuance of a traffic citation. Pet. Br. at i. Apparently, he does not even challenge the constitutionality of search incident to citations for non-traffic offenses.

Second, section 805.1(4) authorizes searches incident to citation in lieu of arrest as well as incident to citation in lieu of continued custody after an arrest has been made. Iowa Code § 805.1(4) (1995). Knowles concedes that a search incident to a custodial arrest is constitutional, pointing to custody as the essential factor underlying the reasonableness of searches incident to arrest. Pet. Br. at 8-9, 24. In making that concession, Knowles necessarily concedes that section 805.1(4) can be constitutionally applied in some situations, i.e., in cases where a custodial arrest and search incident to arrest are made and the suspect is later released on a citation.

Knowles has in effect conceded the constitutionality of section 805.1(4). Even if Knowles has not conceded, however, he has not met his burden to establish that search incident to citation violates the Fourth Amendment.

II. IOWA CODE SECTION 805.1(4) COMPLIES WITH THE FOURTH AMENDMENT AS IT AUTHORIZES SEARCHES INCIDENT TO CITATION ONLY WHERE THERE IS PROBABLE CAUSE TO ARREST AND CONSTITUTES A LESSER INTRUSION ON FOURTH AMENDMENT INTERESTS THAN CUSTODIAL ARREST AND INCIDENT SEARCH.

The Iowa Supreme Court has interpreted Iowa Code section 805.1(4) as authorizing officers to make a search of the same scope as a search incident to custodial arrest upon issuance of a citation. J.A. 33; *State v. Doran*, 563 N.W.2d 620 (Iowa 1997). Knowles claims that such searches do not fall within the search incident to arrest exception to the warrant requirement, and that they violate the Fourth Amendment. He argues that when a citation is issued, officers may not search unless one of the recognized exceptions to the warrant requirement applies. Knowles' claim should be rejected.

Reasonableness is the standard by which Iowa Code section 805.1(4) must be judged. That statute fully satisfies the Fourth Amendment as it authorizes searches only where the officer has probable cause to arrest and is statutorily authorized to make a custodial arrest. Searches under the statute are, therefore, merely a subset of searches incident to arrest. Thus, searches incident to citation, like the more familiar searches incident to custodial arrest, are *per se* reasonable and an exception to the warrant requirement. In addition, if a balancing test is applied, the State's interests in searching, i.e., officer safety and preservation of evidence, outweigh the affected privacy interests – particularly in light of the fact

that Iowa officers may unquestionably make a custodial arrest and incidental search. Therefore, Knowles' challenge to section 805.1(4) should be rejected.

Knowles' claim is made against the following statutory background. Iowa peace officers are authorized to make custodial arrests for any "public offense." *See* Iowa Code §§ 805.1(6) and 804.7 (1995). Alternatively, an officer having grounds to make an arrest on a bailable offense[1] may forego arrest and, instead, elect to issue a citation. If an arrest has already been made, the officer may issue a citation in lieu of continued detention. Iowa Code § 805.1(1) (1995). The challenged statute then provides that "issuance of a citation . . . does not affect the officer's authority to conduct an otherwise lawful search." Iowa Code § 805.1(4) (1995).

The Iowa Supreme Court has interpreted section 805.1(4) as creating a bright-line rule authorizing a search, of the same scope as the Constitution authorizes for a search incident to a custodial arrest, when an officer issues a citation. *State v. Knowles*, 569 N.W.2d 601 (Iowa

---

[1] Section 805.1(1) (1995) authorizes use of citations for any bailable offense, except violations of section 708.11 (stalking). Iowa limits nonbailable offenses to the following:

> Any class "A" felony, murder, felonious assault, sexual abuse in the second or third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, or any felony included in section 124.401, subsection 1, paragraph "a" [manufacture, possession and possession with intent to deliver a controlled substance].

Iowa Code §§ 805.1(1), 811.1, 708.11, 124.401(1)(a) (1995).

1997); *State v. Doran*, 563 N.W.2d 620 (Iowa 1997); *State v. Cook*, 530 N.W.2d 728, 731-732 (Iowa 1995); *State v. Meyer*, 543 N.W.2d 876, 879 (Iowa 1996). The Court recognized that officers in Iowa have statutory authority to make a custodial arrest in every case, and found that, " '[t]o the extent the officer elects to . . . pursue a lesser intrusion [than custodial arrest], he has a right to condition that election on certain aspects of detention and search which are conducive to the officer's safety.' " *Doran*, 563 N.W.2d at 623, *quoting*, *State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990). *See also Knowles*, J.A. 33. In Knowles' case, the Court went on to hold that the authority to search conferred by section 805.1(4) does not extend beyond that permitted by the Fourth Amendment. J.A. 33. *Accord Doran*, 563 N.W.2d at 623.

In determining whether section 805.1(4) is consistent with the Fourth Amendment, the Court determines whether the authorized searches are "reasonable." In making a reasonableness determination, the Court looks to two sources: the traditional common-law protections against unreasonable searches and seizures;[2] and a

---

[2] *See e.g. Steagald v. United States*, 451 U.S. 204, 217 (1981) ("The common law may, within limits, be instructive in determining what sorts of searches the Framers of the Fourth Amendment regarded as reasonable."); *Whren v. United States*, 517 U.S. 806, 819 (1996) (following "the traditional common-law rule that probable cause justifies a search and seizure."); *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) ("Both the standards and procedures for arrest and detention have been derived from the Fourth Amendment and its common-law antecedents."); *Weeks v. United States*, 232 U.S. 383, 389-396 (1914) (looking to the common-law of England and the United States in evaluating the constitutionality of searches incident to arrest).

balancing of the government's interest requiring the intrusion against the individual's privacy interests.[3] However, "[w]ith rare exceptions . . . the result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Whren v. United States*, 517 U.S. 806, 816 (1996).

Where probable cause has existed, the only cases where the Court has found it necessary to actually perform a balancing analysis have involved searches or seizures conducted in an

> extraordinary manner, usually harmful to an individual's privacy or even physical interests – such as, for example, seizure by means of deadly force, . . . unannounced entry into a home, . . . entry into a home without a warrant, . . . or physical penetration of the body.

Whren, 517 U.S. at 818 (internal citations omitted).

Because no such "extraordinary" means of executing a search is at issue in this case, there is no need to perform the traditional Fourth Amendment balancing analysis. The requirement that the search be predicated

---

[3] *See, e.g., Whren*, 517 U.S. at 816 (Fourth Amendment cases involve a balancing of all relevant factors); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979) (the permissibility of a particular law enforcement practice is judged by balancing its intrusion against its promotion of legitimate governmental interests); *Camara v. Municipal Court*, 387 U.S. 523, 536-37 (1967) ("there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."); *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (in determining reasonableness, the Court balances the need to search against the invasion which the search entails).

upon probable cause to arrest is, by itself, sufficient to satisfy the Fourth Amendment. Even if a balancing analysis is performed, Iowa Code section 805.1(4) passes Fourth Amendment muster.

A. SEARCHES INCIDENT TO ARREST ARE *PER SE* REASONABLE UNDER THE FOURTH AMENDMENT.

Searches incident to arrest are *per se* reasonable under the Fourth Amendment as they are based on probable cause to arrest. The validity of such searches is unquestionable.

"It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment." *United States v. Robinson*, 414 U.S. 218, 224 (1973). The right to search the person of an arrestee "has been regarded as settled from its first enunciation"; the right to search the area within the control of the arrestee has likewise been long-recognized. *Id. Accord, Agnello v. United States*, 269 U.S. 20, 30 (1925) (the right to make a warrantless search incident to arrest "is not to be doubted."); *Weeks v. United States*, 232 U.S. 383, 392 (1914) (the right of the State to make a warrantless search incident to arrest was "always recognized under English and American law . . . "). The authority to search incident to arrest, and the reasons for such searches, have been "repeatedly" affirmed. *Robinson*, 414 U.S. at 226. Throughout the series of cases in which the Court addressed the issue of the proper scope of a search incident to arrest, "no doubt has been expressed as to the unqualified authority of the arresting authority to

search the person of the arrestee." *Robinson*, 414 U.S. at 225.[4] Those cases establish that search incident to arrest is not only an exception to the warrant requirement but "reasonable" under the Fourth Amendment. *Robinson*, 414 U.S. at 225-26;[5] *accord Gustafson v. Florida*, 414 U.S. 260, 263-264 (1973).

The proper scope of a search incident to arrest is similarly well established. The arresting officer may search the person arrested in order to remove any weapons that the suspect might use to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, the arresting officer may search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. *Chimel v. California*, 395 U.S. 752, 762-763 (1969). Officers may also lawfully search the area within the arrestee's "immediate control." *Id.* at 763. When an occupant of an automobile has been arrested, the area within his control includes the entire passenger compartment of that automobile, including any

---

[4] *Citing Carroll v. United States*, 267 U.S. 132 (1925); *Marron v. United States*, 275 U.S. 192 (1927); *Go-Bart v. United States*, 282 U.S. 344 (1931); *United States v. Lefkowitz*, 285 U.S. 452 (1932); *Harris v. United States*, 331 U.S. 145 (1947); *Trupiano v. United States*, 334 U.S. 699 (1948); *United States v. Rabinowitz*, 339 U.S. 56 (1950); *Preston v. United States*, 376 U.S. 364 (1964); *Chimel v. California*, 395 U.S. 752 (1969).

[5] Knowles concedes that the Iowa statutes authorizing custodial arrest for any offense, [*see* Iowa Code §§ 805.1(6), 804.7 (1995)], are constitutional. Pet. Br. at 23-24. Therefore, it is only the common-law authority to *search* that bears discussion; the power to *arrest* at common-law is not at issue in this case.

containers therein. *New York v. Belton*, 453 U.S. 454, 460-461 (1981).

A search incident to arrest is not limited by the offense which gave rise to the search. Rather, the Court has noted that the decision whether to search is "necessarily a quick ad hoc judgment" and has established a bright-line rule permitting a search even if it is apparent that no weapon or evidence of the crime would be found. *Robinson*, 414 U.S. at 235.

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment: that intrusion being lawful, a search incident to the arrest requires no additional justification.

New York v. Belton, 453 U.S. at 461, *quoting*, *United States v. Robinson*, 414 U.S. at 235.

It is beyond dispute that search incident to custodial arrest comports with the Fourth Amendment. Search contemporaneous with issuance of a citation is equally lawful where the officer has probable cause and statutory authority to make a custodial arrest. Under these circumstances, probable cause to arrest establishes the reasonableness of both searches incident to custodial arrest and those incident to citation.

B. SEARCHES INCIDENT TO CITATION COMPLY WITH THE FOURTH AMENDMENT: THEY ARE *PER SE* REASONABLE; FURTHER, UNDER A BALANCING TEST, THE STATE'S INTERESTS IN PROTECTING OFFICERS AND PRESERVING EVIDENCE OUTWEIGH THE AFFECTED PRIVACY INTERESTS.

Searches incident to citation are *per se* reasonable under the Fourth Amendment; that reasonableness is not dependent on the relative strength of the State's need to search and the affected privacy interest. Even if a balancing test is applied, however, the State's interests greatly outweigh the impact of a search incident to citation upon a suspect's Fourth Amendment rights.

1. Searches incident to citation are a type of search incident to arrest and are *per se* reasonable as it is the existence of probable cause, and not the fact of custody, which justifies searches incident to arrest.

Searches incident to citation are merely a subcategory of search incident to arrest and are constitutional for the same reasons as are searches incident to custodial arrest. Probable cause to arrest is the critical factor giving rise to the reasonableness of both types of searches. Because Iowa Code section 805.1(4) requires probable cause to arrest, that statute complies with the requirements of the Fourth Amendment.

That it is probable cause to arrest which underlies the reasonableness of searches incident to arrest is supported by the Court's rulings which permit a search incident to arrest to *precede* custodial arrest so long as there is probable cause to arrest at the time of the search. *See Peters v.*

New York, 392 U.S. 40, 66-67 (1968) (search of burglary suspect prior to formal arrest was proper as the officer had probable cause to arrest at the time the search was made); *Rawlings v. Kentucky*, 448 U.S. 98, 111-12 (1980) (upholding a search of defendant even though the search preceded defendant's formal arrest, stating, "where the formal arrest followed quickly on the heels of the challenged search . . . we do not believe it particularly important that the search preceded the arrest rather than vice versa.")

In his concurring opinion in *Sibron*, Justice Harlan makes a strong case for the State's position that it is the presence of probable cause, and not the fact of custody, that justifies a search incident to arrest.

> Of course, the fruits of a search may not be used to justify an arrest to which it is incident, but *this means only that probable cause to arrest must precede the search. If the prosecution shows probable cause to arrest prior to a search of a man's person, it has met its total burden.* There is *no* case in which a defendant may validly say, "Although the officer had a right to arrest me at the moment when he seized me and searched my person, the search is invalid because he did not in fact arrest me until afterwards."

Sibron, 392 U.S. at 77 (Harlan, J., concurring) (emphasis added).

In *Whren*, the Court noted that the existence of probable cause to arrest is dispositive of the reasonableness of a search or seizure.

> For the run-of-the-mine case, which this surely is, . . . there is no realistic alternative to

> the traditional common law rule that probable cause justifies a search and seizure.
>
> Here the district court found the officers had probable cause to believe that petitioner had violated the traffic code. That rendered the stop reasonable under the 4th Amendment, and the evidence admissible. . . .

Whren, 517 U.S. at 819. Searches under section 805.1(4) are conditioned upon probable cause to arrest. Thus, under the rationale of *Whren*, searches under the statute are reasonable.

2. The State's interest in searching incident to issuance of a citation outweighs the impact on suspects' privacy interests, particularly in Iowa where officers may elect in any case to make custodial arrests and contemporaneous searches.

If the Court finds that searches incident to citation are not *per se* constitutional based upon probable cause to arrest, a balancing analysis is applied. *See Whren*, 517 U.S. at 816-17; *New York v. Class*, 475 U.S. 106, 116 (1986); *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979). The outcome of the analysis is unchanged – Iowa Code section 805.1(4) fully complies with the Fourth Amendment.

(a) The State's interests in searching suspects for officer safety and to preserve evidence are strong.

The State's interest in searching suspects before release is very strong. Searches incident to citation advance the same interests as do searches incident to custodial arrest: protecting officer safety and preventing destruction of evidence. *Chimel v. California*, 395 U.S. 752, 762-63 (1969). Those interests are equally at stake in searches incident to citation and searches incident to arrest.

In weighing the competing interests, the Court considers whether the legislature authorized a particular police practice. Where, as here, a legislative body has authorized a search, the Court is "reluctant" to decide that the search is unreasonable. *United States v. Watson*, 423 U.S. 411, 416 (1976); *United States v. DiRe*, 332 U.S. 581, 585 (1948); *and cf. Illinois v. Krull*, 480 U.S. 340, 351-52 (1987).

The Court has previously recognized the dangers posed to police during automobile stops. *Maryland v. Wilson*, 519 U.S. 408, ___, 117 S.Ct. 882, 885 (1997) ("Regrettably, traffic stops may be dangerous encounters. In 1994 alone, there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops."); *Pennsylvania v. Mimms*, 434 U.S. 106, 110-11 (1977) (noting the "inordinate risk confronting an officer as he approaches a person seated in an automobile."); *Adams v. Williams*, 407 U.S. 143, 148, n.3 (1972) (noting that according to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an

automobile, *citing* Bristow, Police Officer Shootings – A Tactical Evaluation, 54 Crim. L.C. & P.S. 93 (1963)); *New York v. Class*, 475 U.S. at 116 (noting the danger to officer safety when a suspect is seated in an automobile with possible access to a dangerous weapon); *Robinson*, 414 U.S. at 234 ("Nor are we inclined, on the basis of what seems to us to be a rather speculative judgment, to qualify the breadth of the general authority to search incident to lawful custodial arrest on an assumption that persons arrested for the offense of driving while their licenses have been revoked are less likely to possess dangerous weapons than are those arrested for other crimes."). In fact, the Court's concern with officer safety is so great that it has even permitted intrusion on the privacy interests of persons merely accompanying a suspect. *Maryland v. Wilson*, 519 U.S. at ___, 117 S.Ct. at 886 (holding that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop).

Investigatory stops pose a clear and present danger to law enforcement officers. The most recent statistics available from the Federal Bureau of Investigation report that in 1996, fifty-five officers were killed in the line of duty. Of those, eleven officers (or one-fifth of those killed) were slain while enforcing traffic offenses. Another twelve were killed while investigating suspicious persons or circumstances. Uniform Crime Reports, 1996, United States Department of Justice, Federal Bureau of Investigation, "Law Enforcement Officers Killed and Assaulted," p. 3. In contrast, during that same year only eight officers were killed by robbery suspects and three by suspects during "drug-related situations."

Id. A significant number of officer injuries are also attributable to traffic offenders: 4,333 (9%) of the 46,695 reported non-fatal assaults on officers in 1996 were committed by suspected traffic offenders. *Id.* at 65-66, 69.

It is not surprising that persons stopped for citable offenses would assault officers, attempt to escape, or destroy evidence. While Knowles attempts to portray all such cases as "minor" traffic stops, that is not in fact the case. Iowa permits the use of citations for even serious felonies.[6] Moreover, conviction on many "minor traffic offenses" can result in very serious penal and extrajudicial consequences.[7]

The mere fact that one is stopped and cited for a violation may pose a serious threat to offenders who have reason to fear being identified, such as persons with outstanding warrants, persons who (unbeknownst to the officer) are fleeing after committing other, more serious offenses,[8] or persons who are evading creditors or others.

---

[6] Examples would include: second degree burglary and first degree theft, both punishable by up to ten years in prison and a fine of $500 to $10,000, *see* Iowa Code §§ 713.4, 714.2(1), 902.9(3) (1997); and, auto theft, punishable by imprisonment for up to five years and a fine $500.00 to $7,500.00, *see* Iowa Code §§ 714.1(2), 902.9(4) (1997).

[7] For example, in Iowa, driving while one's license is barred is an aggravated misdemeanor, carrying a penalty of not to exceed two years in prison and a fine of between $500 and $5,000 and an additional two to six year license bar. Iowa Code §§ 321.561, 321.555, 903.1(2), 321.555 (1995).

[8] For example, both serial killer Ted Bundy and terrorist Timothy McVeigh were apprehended after being identified during a "routine" traffic stop. *Bundy v. State*, 455 So.2d 330, 336 (Fla. 1984); Stephan Braun, "Trooper's Vigilance Led to Arrest of Blast Suspect," L.A. Times, A-1 (April 22, 1995) (convicted Oklahoma City bomber arrested after traffic stop).

In fact, initially the suspect may not know of what crime he is suspected. During that period of uncertainty, the incentive to destroy evidence or effect an escape will exist equally in cases which ultimately end in issuance of a citation as in those which end in custodial arrest. Thus, issuance of a "mere" citation, in fact, creates strong incentives for a suspect to flee or destroy evidence of the crime for which he was cited as well as evidence of other, as yet undetected, crimes.

(b) The impact of section 805.1(4) on privacy interests is minimal.

While the State's interest in searching is very strong, the impact of section 805.1(4) on suspects' privacy is limited. Iowa law enforcement officers have authority to make custodial arrests. Given that fact, no additional invasion of privacy results from a search of the same scope made incident to a citation rather than to arrest. *Cf. Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (the additional intrusion of asking a driver of already lawfully detained vehicle to get out of the vehicle is *de minimus*); *Maryland v. Wilson*, 519 U.S. 408, ___, 117 S. Ct. 882, 886 (1997) (the additional intrusion when a passenger in a lawfully stopped car is required to exit the vehicle is "minimal"). Searches incident to citation are actually much *less* intrusive than the available alternative of search incident to custodial arrest.

In fact, the practice of issuing citations is a reform aimed at minimizing the severity of warrantless intrusions on Fourth Amendment interests and limiting the length of pretrial detentions. *See, e.g.*, ABA Standards for Criminal Justice §§ 10-2.1, 10-2.2, 10-2.3 (2d ed. rev. 1985); Model Code of Pre-Arraignment Procedure § 120.2 (1975); LaFave, Search and Seizure: A Treatise on the Fourth Amendment, 3d ed., section 5.2(h).

(c) Issuance of a citation combined with a contemporaneous search is less intrusive on suspects' privacy than is custodial arrest and search.

The intrusion on privacy interests occasioned by a search incident to citation is much less than would result from an officer's election to make a custodial arrest and search. Given the State's strong interest in searching, that minimal intrusion is "reasonable" under the Fourth Amendment.

This Court has recognized as constitutionally "reasonable" some searches and seizures "significantly less intrusive than an arrest" – even when made in the *absence* of probable cause to search or seize. *Michigan v. Summers*, 452 U.S. 692, 697-698 (1981) (upholding the detention of a resident of a house during execution of a search warrant for the premises). *See also Terry v. Ohio*, 392 U.S. 1 (approving a weapons frisk for weapons as a justifiable response to an officer's reasonable belief that a suspect is armed and dangerous); *Adams v. Williams*, 407 U.S. 143 (1972) (approving the forcible seizure of a suspect to investigate an informant's tip that the suspect was armed

and carrying narcotics); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (special law enforcement problems confronted by roving border patrols were adequate to support vehicle stops based on the agents' awareness of specific articulable facts indicating the vehicle contained illegal aliens). *New York v. Class*, 475 U.S. at 118-19 (the Court noted that the detention of a suspect and limited search of his car was "far less intrusive than a formal arrest, which would have been permissible . . . under New York law . . . ").

The rationale of those cases is even more persuasive in Knowles' case. Section 805.1(4) requires probable cause and the intrusion upon citizens' privacy which results from search incident to arrest is actually less intrusive than the other available alternative, i.e., search incident to custodial arrest.

3. The permissible scope of a search incident to citation is the same as for a search incident to custodial arrest; it is not limited to the scope of a *Terry* search.

Petitioner argues that where police lack probable cause to *search*, searches incident to citation should be limited to a *Terry*[9] weapons sweep. However, search incident to citation is based upon probable cause to *arrest* and serves a function quite different from a *Terry* search. Thus, the limitations of *Terry* do not apply to search incident to citation.

The scope of a search must be strictly tied to and justified by the circumstances which make initiation of

---

[9] *Terry v. Ohio*, 392 U.S. 1 (1968).

the search reasonable. Thus, the scope of a *Terry* search must be "strictly circumscribed by the exigencies which justify its initiation" – officer safety. Consequently, a search for weapons in the absence of probable cause to arrest must be limited to that which is necessary to discover weapons which might be used to harm the officer or others nearby and is less than a "full" search. *Terry*, 392 U.S at 25-26.

In contrast, search incident to arrest is a "'wholly different kind of intrusion" from a *Terry* search and serves a "quite different" purpose. *Robinson*, 414 U.S. at 228. There is a fundamental difference between a *Terry* protective frisk and a search incident to arrest, a distinction in purpose, character, and extent – probable cause to arrest. *Robinson*, 414 U.S. at 227-28. The bases for searches incident to arrest are two-fold: the need to disarm suspects for officer safety and the need to preserve evidence. *Id*. Those rationales also apply where a citation is issued in lieu of custodial arrest and justify searches incident to citation of the same scope as would be permitted if a custodial arrest were made.

The need to perform a more expansive search incident to arrest than in *Terry* situations arises from essential differences in the two types of encounters:

> An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its law obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows. The protective search for weapons, on the other hand, constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person.

Robinson, 414 U.S. at 228, *quoting*, *Terry v. Ohio*, 392 U.S. at 25-26. Because of these essential differences, *Terry* affords no basis to carry over to a probable-cause arrest the limitations placed on a stop-and-frisk search permissible without probable cause. *Robinson*, 414 U.S. at 228. Issuance of a citation, like arrest, initiates a prosecution with attendant restrictions on freedom of movement. Thus, search incident to citation is a wholly different kind of intrusion from a *Terry* search.

The first justification for the authority to search incident to a lawful arrest is officer safety. *Robinson*, 414 U.S. at 234. That justification applies as well in cases where a citation is issued.

The Court in *Robinson* rejected the suggestion that the traditional scope of a search incident to arrest should be restricted on the "questionable" assumption that one arrested for a traffic offense is less likely to possess dangerous weapons than are those arrested for other crimes. Instead, the Court focused not on the nature of the crime but on the extended exposure which follows the taking of a suspect into custody and transporting him to the police station, as compared to the "relatively fleeting" contact resulting from a *Terry*-type stop. *Robinson*, 414 U.S. at 234-235.

Similarly, the scope of a search incident to citation should not be restricted to a *Terry* search. Like custodial arrest, issuance of a citation initiates a (possibly very serious) prosecution, with attendant restrictions on suspects' freedom, including the threat of possible future incarceration. Because a citation signals the start of a prosecution, it creates the same incentives to make a violent escape or destroy evidence as does a custodial

arrest. Further, although the contact between officers and suspects during issuance of a citation might be less extensive than where a custodial arrest is made, contact is much more extended than in a brief *Terry* stop. A citation also involves contact at very close range.

The Court has recognized that concern with officer safety is strongly present even absent custodial arrest. "If a suspect is 'dangerous', he is no less dangerous simply because he is not arrested." *Michigan v. Long*, 463 U.S. 1032, 1050 (1983).

> [I]f a suspect is not placed under arrest, he will be permitted to reenter his automobile, and he will then have access to any weapons inside. [Citation omitted.] Or, . . . the suspect may be permitted to reenter the vehicle before the Terry investigation is over, and again, may have access to weapons. In any event, we stress that a Terry investigation . . . involves a police investigation 'at close range' [citation omitted] when the officer remains particularly vulnerable in part *because* a full custodial arrest has not been effected. . . .

Michigan v. Long, 463 U.S. at 1052 (emphasis in original). *Accord New York v. Class*, 475 U.S. at 116 (where in evaluating the reasonableness of the detention of a suspect and limited search of his car, which uncovered a gun, the Court noted the danger inherent in returning a suspect to his car and, thus, permitting him possible access to a dangerous weapon and the benefit of partial concealment provided by the car's exterior); *Pennsylvania v. Mimms*, 434 U.S. at 110 (recognizing the risk to officer safety when approaching a suspect seated in an automobile).

The Court has refused to make a case-by-case analysis of the danger to officer safety presented by custodial arrests. The authority to search does not depend upon the likelihood in a particular case that weapons would actually be found; neither is it of any moment that the officer did not have a subjective fear of the suspect or suspect that the suspect was armed. *Gustafson v. Florida*, 414 U.S. 260, 265-66 (1973). The Court should likewise decline to require a case-by-case determination of danger in the context of searches incident to citation.

The second justification for searches incident to arrest is to prevent destruction of evidence. That interest justifies an "automatic" search. *Michigan v. Long*, 463 U.S. 1032, 1049, n.14 (1983). While this interest does not exist in the *Terry* context, it is strongly present in cases where citations are issued. That difference dictates that the *Terry* limitations do not apply to searches incident to citation.

The need to preserve evidence is at least as great when a citation is issued as when a custodial arrest is made. The use of citations in Iowa is not limited to those types of offenses for which arguably there is little possibility that evidence will be uncovered.[10] The probability that evidence will be found is unrelated to the manner in which prosecution is initiated. Further, in both contexts, the suspect is made aware that charges are being pressed

---

[10] Knowles argues that "there is no evidence a motorist could destroy to avoid prosecution for speeding." Pet. Br. at 12. However, no such categorial conclusion can be drawn. For example, identification may be raised as an issue at trial and there would often be evidence on the person or in his automobile which would be helpful in proving the identity of the driver.

and that officers might seek evidence to support those charges. There is, in fact, a special need to search where a suspect is cited and released. The fact that the suspect is released gives him access to any evidence which might exist and unfettered opportunity to hide or destroy it.

Professor LaFave rejects Knowles' argument that a *Terry*-type search marks the limit of searches incident to citations. LaFave notes that, although the citation process is currently used primarily for minor traffic offenses, there is no reason why citations should not be used for all minor offenses. He points out that the use of citations is "most desirable" and has been recommended in recent law reform efforts. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, 3d ed., § 5.2(h). *And see* ABA Standards for Criminal Justice sections 10-2.1, 10-2.2, 10-2.3 (2d ed. rev. 1985); Model Code of Pre-Arraignment Procedure section 120.2 (1975); Unif.R.Crim.P. 211, 10 U.L.A. 14 (1992). In fact, Iowa law exceeds the reforms recommended by Professor LaFave.

Reform would be impeded if officers are permitted to conduct only a *Terry*-type search when a citation is issued, "for then it would never be feasible to give a citation for any minor offense where there is no need for custody of the defendant . . . yet a need to acquire evidence from his person." He thus concludes that the "better view" is that a search is no less lawful when incident to an arrest not of a "custodial" nature. *Id.*

Professor LaFave finds support for his position in section 10-2.4 of the ABA standards (2d ed. rev. 1985) which provides that "the defendant's subsequent release on citation should not affect the lawfulness of any search

incident to the arrest."[11] He also points to the Model Code, which permits search incident to arrest [section 330.1] together with release on citation after arrest [section 120.2(2)], and to the commentary to the Uniform Rule 211(b)(3), which quotes the ABA position. LaFave, *supra* at n.153.

Some lower courts have begun to accept this position as well. *See State v. Greenslit*, 151 Vt. 225, 559 A.2d 672 (1989) (probable cause to arrest is the rationale which underlies search incident to arrest; thus the Fourth Amendment permits a search notwithstanding that a citation was issued in lieu of custodial arrest); *People v. Bland*, 884 P.2d 312 (Colo. 1994) (noncustodial arrest for an offense for which statute barred custodial arrest entitled police to make a search for evidence "equal in scope to a full search incident to a custodial arrest" although scope of search is tied to the offense for which the officer has probable cause to arrest).

LaFave's reasoning is particularly compelling in this case because Iowa law not only allows the use of citations

---

[11] Knowles correctly points out that standard 10-2.3 of the 1986 ABA Standards contained language very similar to Iowa Code section 805.1(4) and that the standard has subsequently been amended. However, the standard as it now exists does not *prohibit* search incident to citation, it merely stops short of affirmatively advocating such searches. Searches incident to citation are clearly consistent with the reforms urged by the American Bar Association and not inconsistent with the current language of standard 10-2.3. These factors undoubtedly led to Professor LaFave's conclusion that the ABA Standards reflect his own view that searches incident to citation are permitted by the Fourth Amendment.

for all "minor" offenses, but also for more serious misdemeanors and even for most felonies. In those situations, the need to search for evidence and weapons is self-evident.

4. A bright-line rule authorizing search incident to citation is necessary to ensure uniform application of the protections of the Fourth Amendment.

Knowles' approach would require the Court to determine the constitutionality of searches on a case-by-case basis. This Court has flatly rejected any suggestion that there must be a case-by-case determination of whether a search incident to arrest was justified by one of the underlying reasons for the doctrine. Instead, the Court has found that "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." *Robinson*, 414 U.S. at 235; *Accord Gustafson v. Florida*, 414 U.S. at 266. The Court should also reject Knowles' suggestion that searches incident to citation be evaluated on a case-by-case basis.

While the Court has generally eschewed *per se* rules in the Fourth Amendment context, *see, e.g., Ohio v. Robinette*, 519 U.S. 33 (1996), it has not always done so, *Maryland v. Wilson*, 519 U.S. at ___, 117 S.Ct. at 885, n.1. The Court has been particularly willing to set forth bright-line rules in the context of decisions that must be made by officers in the field, including searches incident to arrest. *See, e.g., United States v. Robinson*, 414 U.S. 218

(1973) (search may be conducted incident to any custodial arrest); *Gustafson v. Florida*, 414 U.S. 260 (1973) (same); *New York v. Belton*, 453 U.S. 454 (1981) (bright-line rule establishing the scope of a search of a vehicle incident to arrest); *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (officer as a matter of course may order the driver of a lawfully stopped vehicle to exit the vehicle); *Michigan v. Long*, 463 U.S. 1032 (1983) (a *Terry* search may include the driver of the car and the passenger compartment); *Maryland v. Wilson*, 519 U.S. 408 (1997) (police officer making a traffic stop may order passengers out of the vehicle pending completion of the stop).

The Court's repeated use of bright-line search rules may be explained by the purpose of the Fourth Amendment. As Professor LaFave has noted, Fourth Amendment doctrine is primarily intended to regulate the police in their day-to-day activities. LaFave, "Search and Seizure: A Treatise on the Fourth Amendment," 3d ed. § 5.2(c). Thus, search and seizure rules should be expressed in terms of bright-line rules which will be applied to all cases of a certain type, regardless of the factual circumstances presented in a particular case. LaFave cautions that "we must resist 'the understandable temptation to be responsive to every relevant shading of every relevant variation of every relevant complexity' lest we end up with 'a Fourth Amendment with all of the character and consistency of a Rorschach blot.' " *Id., quoting*, Amsterdam, Perspectives on the Fourth Amendment, 58 Minn.L.Rev. 349, 397-398 (1974).

A bright-line rule is particularly appropriate to searches incident to citation, which involve relatively

minor intrusions into privacy, occur with greater frequency than any other type of police search, and require officers to make difficult legal decisions of a type that virtually defy on-the-spot analysis. LaFave, *supra*, § 5.2(c). In such circumstances, the security guaranteed by the Fourth Amendment can only be realized if the police are acting under a clear set of rules which will make it possible in most cases to determine beforehand whether an invasion of privacy is justified in the interest of law enforcement. *Id.*

The decision to search incident to arrest or citation cannot be made with the degree of forethought and reflection possible in most other search decisions. Instead, the decision to search must be made immediately upon the, often unanticipated, decision to arrest or cite. The fact of arrest or citation gives rise to an immediate need to search because, at the moment of arrest or citation, the suspect is motivated to conceal, destroy or furtively abandon any incriminating evidence. At that moment also arises incentive to flee, with or without the use of a weapon. *LaFave, supra,* § 5.2(c). Because the decisions to cite or arrest and to search must be made quickly, frequently, and under an infinite number of factual situations, a bright-line rule is necessary to ensure that officers can accurately determine when searches are permitted, and when they are not. Only then can the protections afforded by the Fourth Amendment be uniformly and consistently applied in practice.

5. Search incident to citation is conditioned upon probable cause to arrest; that standard is sufficient to curb police discretion and prevent discriminatory enforcement or random, suspicionless searches.

Petitioner claims that section 805.1(4) authorizes random, suspicionless searches and will lead to discriminatory enforcement of the criminal code. That claim should be rejected. The existence of probable cause to arrest is the essential factor which curbs police discretion and ensures that the Fourth Amendment's protections will be provided to all suspects.

Knowles attempts to equate search incident to citation to general warrants and writs of assistance in colonial America and England. Pet. Br. at 5-6. This analogy is faulty: the critical and obvious difference is that a search incident to citation requires that the officer first have probable cause to make an arrest. That requirement is sufficient guarantee against the dangers of random, suspicionless searches which the Fourth Amendment was designed to prevent.

Further, unlike persons affected by general warrants and writs of assistance, traffic offenders control their own fate: their actions determine whether an officer may stop, cite and search them. Knowles and his amicus imply that it is virtually impossible to avoid violating one of the "myriad" traffic regulations. Pet. Br. 20; Amicus Brief of the A.C.L.U. 8-9. However, while it may be tempting to speed, for example, it is no more impossible to comply with that traffic law than it is impossible to comply with other laws. Surely, Petitioner and his amicus would not apply this same logic to income tax violations, petty theft

or other crimes which are widely believed to be pervasive in our society.

Next, Knowles contends that search incident to citation would expand the authority of officers to make warrantless searches, and thus violate the Fourth Amendment. However, Iowa's statute regarding search incident to citation does not expand officers' authority to search. Knowles concedes, as he must, that without that statute, officers who wished to search could simply make a custodial arrest and search incident thereto. Pet. Br. at 24. *See State v. Meyer*, 543 N.W.2d 876, 878 (Iowa 1996) *citing State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990) (officers are permitted "virtually unlimited discretion in deciding when to make an arrest, issue a citation, or give a warning.").

In reality, any expansion in the authority of Iowa peace officers to search results, not from section 805.1(4), but from Iowa Code sections 804.1(6) and 804.7 (1995), which authorize officers to make custodial arrests for any public offense. Knowles did not, however, raise a Fourth Amendment challenge in the district court to Iowa's statutory authorization of custodial arrest for speeding. The Iowa Supreme Court therefore deemed that issue waived. J.A. 33. He does not challenge that section in this proceeding; in fact, he concedes that a custodial arrest would be constitutional. Pet. Br. at 24-25.

Moreover, any such claim would be futile. In *Whren*, the petitioner argued that some traffic stops, even if based upon probable cause, violated the Fourth Amendment. In dicta, the court noted that, "we are aware of no principle that would allow us to decide at what point a code of law becomes so expansive and so commonly

violated that [the] infraction itself can no longer be the ordinary measure of the lawfulness of enforcement. And even if we could identify such exorbitant codes, we do not know by what standard (or by what right) we would decide, . . . which particular provisions are sufficiently important to merit enforcement." *Whren*, 517 U.S. at 818-19.[12]

Knowles also asserts that "Iowa's search incident to citation statute provides police with no standards or guidance as to when and against whom it should be invoked. A police officer making a traffic stop has complete discretion to search or not to search." Pet. Br. at 23-24. In this regard, Petitioner fails to make a principled distinction between a search incident to custodial arrest, which Petitioner concedes is constitutional,[13] and a search incident to citation.

An officer making a custodial arrest, like an officer making a search incident to citation, has discretion as to whether or not to actually search. Notwithstanding that discretion, the Court has never placed any restraints on an officer's discretion to conduct a search incident to custodial arrest. To the contrary, the Court has refused to limit officers' discretion to make a stop or an arrest,

---

[12] The State's power to authorize custodial arrest even for *malum prohibitum* offenses of a type which some might deem minor is supported by common practice. One recent commentator has determined that officers have "unfettered discretion" to arrest for traffic offenses in twenty-six states and can arrest "subject to minimal constraints" in an additional sixteen states. Janet Koven Levit, "Pretextual Traffic Stops: United States v. Whren and the Death of Terry v. Ohio," 28 Loy. U. Chi. L.J. 145, 152 (1996).

[13] Petitioner's Brief at 8-9, 24.

Whren, 517 U.S. at 806, or to search, *Robinson*, 414 U.S. at 235-36.

An argument similar to Knowles' was raised, and rejected, in *Whren*. There, in dicta, the Court noted that probable cause affords the " 'quantum of individualized suspicion' necessary to ensure that police discretion is sufficiently constrained." *Whren*, 517 U.S. at 817-18, *quoting, United States v. Martinez-Fuerte*, 428 U.S. 543, 560 (1976) and *Delaware v. Prouse*, 440 U.S. 648, 654-655 (1979).

Knowles gives no valid reason why that discretion should be limited where a citation is issued but not where a custodial arrest is made. Furthermore, limiting officers' discretion to search incident to citation would not have any appreciable effect on officer discretion. Officers would retain discretion to stop and to make custodial arrests and searches.

Petitioner's proposal would have little or no effect upon the number of searches conducted pursuant to traffic stops and would actually require officers to make more severe intrusions into suspects' freedom by requiring custodial arrests. If search incident to citation is deemed to violate the Fourth Amendment, the unfortunate effect will be to create incentive for officers who fear for their safety or for the destruction of evidence to make custodial arrests where they might otherwise have simply issued a citation. This Court has previously rejected such a countereffective interpretation of the Fourth Amendment. *California v. Acevedo*, 500 U.S. 565, 574-575 (1991) (if police know that they may open a bag only if they search the entire car, they may search more extensively than they otherwise would).

Petitioner attempts to compensate for the weakness in his analysis by suggesting that "the requirement of an arrest as a predicate to a search will at least temper the officer's discretion because the required documentation [of a custodial arrest] will allow assessment of how and against whom this discretion is exercised." Pet. Br. at 24. That argument is unpersuasive.

First, Petitioner does not elaborate on the type of documentation which would be created where a custodial arrest and search are made or how any such documentation would protect a suspect's Fourth Amendment rights. Second, if Knowles is suggesting that the time required to effect a custodial arrest might act as a factor limiting the number of arrests which would be made for minor offenses, that suggestion is both ineffective and unprincipled.

Knowles' proposal is ineffective as it ignores the reality that even if a custodial arrest is initially made, the suspect could be released on citation immediately after a search is conducted. *See* Iowa Code section 805.1(1) (authorizing issuance of citations in lieu of continued custody in situations where a custodial arrest had already been made). His proposal is also unprincipled. The practice of searching incident to citation must stand or fall on its reasonableness; the number of such searches conducted is simply irrelevant to the analysis.

Knowles' ultimate objection is that section 805.1(4) permits discriminatory law enforcement. In *Whren*, this Court rejected a similar argument in the context of allegedly pretextual traffic stops. *Whren*, 517 U.S. at 813. The court has also rejected that argument in the context of searches incident to custodial arrest for minor offenses.

Robinson, 414 U.S. at 234-35; *Gustafson*, 414 U.S. at 263-264. Petitioner has not demonstrated how the danger of discriminatory law enforcement practices in the context of search incident to citation is different from, or greater than, the danger of pretextual stops or pretextual arrests.

Ultimately, the potential for discriminatory law enforcement, while a grave concern, is simply a problem for which the Fourth Amendment is not the proper remedy. While the Constitution prohibits selective enforcement of the law based upon considerations such as race, the constitutional basis for objecting to deliberately discriminatory enforcement of the laws is the Equal Protection Clause rather than the Fourth Amendment. *Whren*, 517 U.S. at 813.

Should the alleged potential for discriminatory application of the search incident to citation doctrine be realized, the best remedy lies in state and federal legislation and police policy guidelines. Non-judicial processes are better suited to determining the precise scope of any problem and to tailoring an appropriate remedy. Among the nearly infinite number of non-judicial responses should discriminatory enforcement become a problem are: police regulations or legislation to limit the offenses for which search incident to citation is authorized or to limit the circumstances under which such searches may be carried out; citizen review boards of police search and seizure actions; and, civil actions for damages. *See Whren v. United States* and Pretextual Traffic Stops: The Supreme Court Declines to Plumb Collective Conscience of Police, Christopher R. Dillon, 38 B. C. L. Rev. 737, 764-70 (1997).

Knowles has failed to carry his burden to show that Iowa Code section 805.1(4) can never be constitutionally applied. The statute fully complies with the Fourth Amendment as it conditions search upon probable cause to arrest and statutory authorization to make a custodial arrest. Searches conducted under section 805.1(4) are a type of search incident to arrest and are *per se* reasonable. Alternatively, such searches are reasonable because the State's strong interests in searching cited suspects to protect officer safety and prevent destruction of evidence outweigh the minimal intrusion on Fourth Amendment interests. Therefore, Knowles' facial challenge to Iowa Code section 805.1(4) fails.

III. TO THE EXTENT THAT PETITIONER CHALLENGES IOWA CODE SECTION 805.1(4) AS IT APPLIES IN HIS CASE, THE SEARCH COMPLIED WITH THE FOURTH AMENDMENT AND, EVEN IF IT DID NOT, THE EXCLUSIONARY RULE DOES NOT APPLY TO THE FRUITS OF THE SEARCH AS THE OFFICER RELIED IN GOOD FAITH ON THE VALIDITY OF THE STATUTE.

It is the State's position that Knowles has not raised a challenge to Iowa Code section 805.1(4) as it applies to him; rather, he has raised only a facial challenge to the statute. If his brief can be read as challenging the statute as applied, any such claim lacks merit for two reasons. First, as shown above, searches under the statute are based upon probable cause to arrest and are, therefore, valid in every case. Second, if the search did violate the Fourth Amendment, the exclusionary rule does not apply

as the officer searched in good faith reliance on the statute authorizing the search.

A. THE SEARCH OF KNOWLES' CAR WAS A PROPER SEARCH INCIDENT TO ARREST AS IT WAS BASED UPON PROBABLE CAUSE TO ARREST.

Knowles has failed to show that the search of his car, which led to the discovery of marijuana, violated the Fourth Amendment. Knowles does not contest that the officer had probable cause to arrest him for speeding and the record clearly establishes that fact. J.A. 12-14. As shown above, the existence of probable cause, standing alone, was sufficient to permit the officer to search Knowles and his car.

B. EVEN IF THE SEARCH OF KNOWLES' CAR VIOLATED THE FOURTH AMENDMENT, THE EXCLUSIONARY RULE DOES NOT APPLY AS THE OFFICER SEARCHED IN GOOD FAITH RELIANCE ON IOWA CODE SECTION 805.1(4) WHICH AUTHORIZED THE SEARCH.

Further, even if the search in this case violated the Fourth Amendment, the fruits of the search should not be excluded.

Officer Cook searched Knowles' car in good faith reliance on an Iowa statute, Iowa Code section 805.1(4). That reliance was reasonable: section 805.1(4) expressly authorizes search incident to issuance of a citation in lieu of arrest where the search would be constitutional if made pursuant to arrest. In addition, the officer had

probable cause to make an arrest and could do so under Iowa law. Significantly, on the date of the stop in this case, the Iowa Supreme Court had upheld searches in the face of Fourth Amendment challenges, finding that the searches were valid searches incident to citation. *See* Iowa Code § 805.1(4) (1995); *State v. Meyer*, 543 N.W.2d 876, 879 (Iowa 1996); *State v. Cook*, 530 N.W.2d 728, 732 (Iowa 1995).

Thus, even if this Court were to accept the claim that Iowa Code section 805.1(4) violates the Fourth Amendment, the seized evidence is not subject to exclusion[14] as the searching officer relied in good faith on a statute which authorized the search. *Michigan v. De Fillippo*, 443 U.S. 31, 40 (1979); *Illinois v. Krull*, 480 U.S. 340 (1987). *See also United States v. Leon*, 468 U.S. 897, 920-922 (1984) (The exclusionary rule does not apply when the officer reasonably relied on an invalid search warrant); *Arizona v. Evans*, 514 U.S. 1 (1995) (exclusionary rule does not apply where erroneous information leading to search resulted from clerical error of court employees).

The reasons for the exclusionary rule do not apply where the *legislature* erred in authorizing unconstitutional warrantless searches. The suppression of evidence obtained by an officer relying on a statute would have little deterrent effect, which is the "prime purpose" of the exclusionary rule. *Krull*, 480 U.S. at 347-349. The exclusionary rule was designed to deter police misconduct, not

---

[14] The exclusionary rule was first developed in Iowa. *State v. Sheridan*, 96 N.W. 730 (1903). Eleven years later, this Court adopted a federal exclusionary rule. *Weeks v. United States*, 232 U.S. 383 (1914).

that of legislators. *Id.* at 350-351. Invalidation of the statute, not the exclusion of evidence, is the greatest deterrent to unconstitutional legislation. *Id.* at 352.

> The purpose of the exclusionary rule is to deter unlawful police action. No conceivable purpose of deterrence would be served by suppressing evidence which, at the time it was found . . . , was the product of . . . a lawful search. To deter police from enforcing a presumptively valid statute was never remotely in the contemplation of even the most zealous advocate of the exclusionary rule.

De Fillippo, 443 U.S. at 38, n.3. As noted in *Krull*, cases in which the Court applied the exclusionary rule to the fruit of searches carried out in reliance on unconstitutional statutes did not involve assertion of a good faith exception to the exclusionary rule. Those cases also differed from this case in that the statutes in question authorized warrantless searches without probable cause. *Krull*, 480 U.S. at 355, n.12.

In the case at bar, Iowa Code section 805.1(4) requires officers to have probable cause to arrest, authorizes a less intrusive alternative to custodial arrest, and then permits the officer to search *if he could have searched had he chosen to arrest*. Thus, section 805.1(4) is consistent with *De Fillippo* in that it does not authorize officers to search in investigations where they otherwise could not search; rather, it allows officers to reserve their existing right to search incident to arrest while at the same time authorizing a less intrusive means of commencing the prosecution process.

"Because the exclusionary rule precludes consideration of reliable, probative evidence, it imposes significant costs: it undeniably detracts from the truthfinding process and allows many who would otherwise be incarcerated to escape the consequences of their actions." *Pennsylvania Board of Probation and Parole v. Scott*, ___ U.S. ___, 118 S. Ct. 2014, 2020 (1998). This "costly toll" on the law enforcement and adjudicative goals should not be imposed unless its imposition would significantly deter unconstitutional searches. *Id.* The exclusionary rule only applies in "those instances where its remedial objectives are thought most efficaciously served," *Arizona v. Evans*, 514 U.S. at 11; *Pennsylvania Board of Probation and Parole v. Scott*, ___ U.S. at ___, 118 S. Ct. at 2023 (Souter, J., dissenting).

As held in *Krull*, there is little or no deterrence where evidence is excluded because of an unconstitutional statute. Further, there are little or no incremental benefits to be gained from "punishing" officers for issuing a citation rather than taking the offender into custody. In rural states like Iowa, where the 99 county courthouses and jails are often many miles apart, custodial arrest of drivers imposes a significant burden on law enforcement and the arrested driver. The core values of the Fourth Amendment are further impinged by a rule forcing officers to engage in a custodial arrest in order to avoid after-the-fact litigation over measures taken to protect themselves in the fluid and dangerous situations that occur in automobile stops based on probable cause of a crime.

Any challenge to Iowa Code section 805.1(4) as it applies to Knowles would be groundless. Even if the record established that the search of Knowles' car violated the Fourth Amendment, the exclusionary rule

would not apply. As a result, Knowles' convictions should be affirmed.

CONCLUSION

Knowles' convictions should be affirmed.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

ELIZABETH M. OSENBAUGH
Solicitor General

*BRIDGET A. CHAMBERS
Assistant Attorney General
Hoover Bldg., 2nd Floor
Des Moines, Iowa 50319
515/281-5976

Attorneys for Respondent

**Counsel of Record*

IN THE SUPREME COURT OF IOWA

No. 212/96-1426

Filed September 17, 1997

STATE OF IOWA,

Appellee,

vs.

PATRICK KNOWLES,

Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott and Dale B. Hagen, Judges.

Defendant convicted of possession of drug paraphernalia in violation of local ordinance appeals via grant of discretionary review and challenges evidentiary rulings allowing evidence of a marijuana pipe obtained by a search incident to the issuance of a traffic citation. **AFFIRMED.**

Maria Ruhtenberg of Paul Rosenberg & Associates, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Steve Johnson, County Attorney, and Christine Branstad, Assistant County Attorney, for appellee.

Considered by Harris, P.J., Carter, Andreasen, and Ternus, JJ., and Schultz,* S.J.

---

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (1997).

PER CURIAM.

Defendant, Patrick Knowles, was convicted of possession of drug paraphernalia in violation of a local ordinance of the City of Newton. He appeals via grant of discretionary review and challenges evidentiary rulings that allowed evidence of a marijuana pipe that had been obtained by a search of his person and automobile incident to the issuance of a traffic citation. Defendant divides his grounds for reversal into three contentions: (1) the lack of probable cause to search under the Fourth Amendment to the federal constitution; (2) the invalidity of a purported statutory grant of authority to search based on the issuance of a traffic citation; and (3) the contention that it was unreasonable to detain the defendant after the issuance of the citation had been completed. Because we find that the controlling issues of law have been determined adversely to appellant in *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), we affirm the judgment of the district court.

We need not consider defendant's first contention as existing separate and distinct from the second. The State does not contend that there was probable cause to search under the warrant standards of the Fourth Amendment. Defendant was stopped by police for driving at an excessive speed. There were no circumstances indicating that evidence of crime existed on his person or in his automobile. The officer's election to search his person and his car was based solely on the perceived authority to search conferred by Iowa Code section 805.1(4) (1995). We thus proceed to the consideration of defendant's second contention.

We have consistently interpreted section 805.1(4) as providing authority to search when a traffic violation has occurred that would constitute grounds for an arrest. *State v. Meyer*, 543 N.W.2d 876, 879 (Iowa 1996); *State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990). In *Doran* we upheld this statutory grant of authority to search in the face of challenges based on the Fourth Amendment and article I, section 8 of the Iowa Constitution. Defendant urges us to reconsider our *Doran* holding, but we decline the invitation.

Defendant's final argument, based on an alleged unreasonable detention following the issuance of the citation is without merit. The further detention was for purposes of making the search, which we have found to have been lawful under section 805.1(4). We have considered all issues presented and conclude that the judgment of the district court should be affirmed.

AFFIRMED.